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SUZUKI LAW OFFICES, L.L.C.

Attorneys at Law

Richard J. Suzuki, Esq. No. 021348

Matthew Bartz, Esq. No. 024972

Brad D. Smith, Esq. No. 021597

2929 East Camelback Road, Suite 224

Phoenix, Arizona 85016

Phone: (602) 682-5270

Facsimile: (480) 907-1571

attorneys@suzukilawoffices.com

Attorneys for Defendant *Smith*

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF ^{COCHISE} ~~MARICOPA~~ ^{MB}

STATE OF ARIZONA,

Plaintiff,

v.

JULIA ANN SMITH,

Defendant.

Case No.: CR2016-~~00563~~

00958

MOTION TO SUPPRESS

COMES NOW, the Defendant, Julia Smith, by and through undersigned counsel, and pursuant to Rule 16.1 *Arizona Rules of Criminal Procedure*, hereby moves this Court to suppress evidence obtained after Defendant involuntarily waived her *Miranda* rights. This motion is made in good faith and not for the purpose of delay.

The following Memorandum of Points and Authorities supports the Defendant's position.

RESPECTFULLY SUBMITTED this 6th day of March, 2017.

SUZUKI LAW OFFICES, L.L.C.

/s/ Matthew Bartz

Matthew Bartz, Esq.

Attorney on Behalf of Defendant

MEMORANDUM OF POINTS AND AUTHORITIES

FACTS

Julia Smith was driving from a dentist appointment in Mexico back into Arizona on April 2, 2016 when she was detained at the Port of Entry. Officer Cano took a declaration from Julia and noticed that she was extremely nervous, avoiding eye contact, and her hands were shaking during his questioning. An x-ray scan of the vehicle returned several anomalies in back quarter panels of the car; based on Julia's anxiousness and the results of the scan, Officer Cano had Julia step out of the vehicle and had Officer Greer and K-9 "Rocky" perform a sniff of the vehicle. "Rocky" alerted to the gas tank and vehicle's undercarriage. A search of the vehicle was initiated and officers located 68 square packages wrapped in brown tape and vacuum sealed which contained a total of 35.4 kilograms (~78 lbs.) of marijuana.

After these packages were discovered, Detective Villaescusa contacted Julia Smith inside the processing office and, along with other officers, began to interview her. Julia was provided with a Juvenile Miranda Warnings form and was asked to read it out loud, which she did. Detective Villaescusa, in his report, says that she understood it, filled it out, and agreed to speak to the detective without parents or an attorney present. A copy of the form shows that Julia partially checked the box wishing to have a lawyer present during questioning.

Julia stated that she had been approached by a former coworker from Sedona and he offered her \$7,000 in exchange for transporting an unknown quantity of marijuana from Mexico into Arizona. She originally agreed to take on the job, contingent upon her getting a plastic ID from the MVD in Douglas, Arizona. She was unable to get the ID and decided not to transport the drugs. She traveled to Mexico for a dentist appointment and stayed with her coworker in a hotel. Julia's car had not been running properly due to a damaged front bumper and some mechanical issues, and she mentioned this

1 to her coworker. When she awoke the next morning, the car and her keys were gone; the coworker said
2 he was having the bumper replaced and mechanical issues fixed for her. When the car returned from
3 the body shop that evening, it had a new bumper. Julia then drove by herself back to Arizona after her
4 dentist appointment was completed, unaware that she was transporting drugs in her vehicle.

5 During the interview, which started at 3:55am, the officers told Julia several times that
6 depending on her response, she might not have to go to jail that day. Julia went through the *Miranda*
7 questionnaire and had specific concerns about her right to have an attorney present. She seemed
8 surprised when the officers told her if she requested an attorney, they wouldn't be able to talk to her.
9 She also kept asking if it was just a one-time thing, concerned that if she waived the right she would
10 not be able to get an attorney in the future. She asked repeatedly in the first couple minutes of the
11 interview why she was being detained, and the officers told her they couldn't talk to her about it unless
12 she waived her right to an attorney. When Julia mentioned that she didn't know why she was even
13 there, the officers then divulged that she was being detained for possession of narcotics, but again
14 repeated that she needed to sign the waiver to get more information. At one point during the
15 questionnaire, Julia said that she was "barely registering this." After completing the questionnaire,
16 officers pointed out that Julia still hadn't marked whether or not she would waive her right to an
17 attorney. Julia said once again that she didn't even know what she was being detained for, and agreed
18 to waive the right temporarily so she could find out.

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20 After getting biographical information, officers asked her what she had done that day. Her
21 response was: "this is, like, where I would much rather have a lawyer present." She then repeated her
22 assumption that they wouldn't tell her what was going on unless she waived her right to an attorney,
23 and didn't understand why she couldn't know unless she waived the right. When the officers asked her
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1 if she wanted a lawyer present, she said she just wanted to know what was going on from the officers'
2 end. Officers explained that if she invoked her right to an attorney, they would take the evidence they
3 had to a prosecutor who would decide if she would be detained, released, or jailed. One of the officers
4 told her the worst thing that could happen if she invoked her right was that she would go to jail that
5 day; he also said if she cooperated, the prosecutor might reach a different conclusion. The officers
6 made no promises about what the result would be, but said Julia's cooperation would improve her
7 chances of being released to a family member. Julia struggled with a decision for several tense minutes
8 before agreeing to tell her side of the story.

9 LAW

10 When a defendant is subject to custodial interrogation, the defendant must be clearly informed
11 that he has the right to remain silent, the right to have counsel present, and that any statement he makes
12 may be used as evidence against him. *Miranda v. Arizona*, 384 U.S. 436, 444 (1966). A defendant
13 must knowingly and intelligently waive his rights against self-incrimination, and courts look to the
14 totality of circumstances to determine voluntary waiver. *Id.* at 475.

15 Juveniles have the same rights against self-incrimination as adults, and when counsel is not
16 present during interrogations for juveniles, "the greatest care must be taken to assure that the admission
17 was voluntary." *In re Gault*, 387 U.S. 1, 55 (1967). The totality of circumstances approach necessarily
18 includes a juvenile's age, experience, education, background, and intelligence, and whether he has the
19 capacity to understand his rights. *Fare v. Michael C.*, 442 U.S. 707, 725 (1979). In comparison to
20 adults, juveniles lack maturity, are more susceptible to outside pressures, and have a character that is
21 not as well formed. *Roper v. Simmons*, 543 U.S. 551, 569 (2004). Police promises of benefits or
22 leniency, whether direct or implied, even if only slight in value, are impermissibly coercive. *State v.*
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1 Lopez, 847 P.2d 1078, 1085 (Ariz. 1992).

2 **ARGUMENT**

3 Based on the totality of the circumstances, Julia Smith's waiver of her right to an attorney was
4 not voluntary, and even if it was, her later invocation of this right should render involuntary all
5 statements that followed it.

6 All of the external circumstances weigh in favor of Julia's statements being involuntary. First,
7 Julia was detained in the early evening and interrogated just before 4am. The long time in between
8 detainment and the interrogation is worrisome, as is the hour the interrogation began, a time when most
9 people are sound asleep. When Officer Cano first encountered Julia, he said she was avoiding eye
10 contact, looked extremely nervous, and her hands were shaking during his questioning. Spending
11 several hours in detainment in the middle of the night likely did not improve her level of nervousness.
12 Her mental state and cognitive abilities were shown to be suboptimal as well; at one point, Julia said
13 that she was "barely registering" what was going on. Julia was subsequently interrogated by no less
14 than three officers; while their demeanor did not suggest any ill will, the negative influential effect of
15 three grown men on a juvenile detainee is greater than if it were just one officer.

17 The interrogation itself presents many indicators against a voluntary waiver of rights. First, the
18 process of filling out the questionnaire showed Julia's general ignorance of her rights. This is
19 understandable, since as she said, it was her first time ever being in police custody. While the officers
20 were patient with Julia during the process, Julia struggled to understand the implications of what she
21 was filling out. Several times both she and officers made statements that suggested that officers would
22 not fully inform her of why she was there unless she waived her rights to an attorney. Even after filling
23 out the questionnaire, she had left the right to an attorney portion blank. She struggled mightily with
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1 the decision, even going so far as to check both yes and no on the form, with the "yes" portion partially
2 checked. Even during the moment that she checked "no" she stated that she was just signing it so that
3 officers could finally tell her why she was there.

4 Second, during the interrogation officers made statements to Julia suggesting that making
5 statements to police would improve her chances of not going to jail, facing lesser charges, or being
6 released to a family member. These suggestions are impermissible coercion and weigh in favor of
7 Julia's waiver being made involuntarily. Any promise, however slight, is coercive in nature and has
8 greater effect on juveniles than adults. Officers also suggested that requesting an attorney would take a
9 long time and prevent Julia from telling her side of the story. Even had these statements been made
10 with the best of intentions, a juvenile in Julia's shoes would be negatively influenced into waiving her
11 rights. Listening to the interrogation, it is clear that Julia is extremely hesitant to talk to police about
12 anything, and she only starts to give in after repeated statements by officers about the various possible
13 outcomes that would result based on her choice. After being detained for several hours, it is easy to see
14 why she made the choice that officers said would give her the highest chance of being released to her
15 family that day.
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17 Lastly, despite Julia's checkmark on the questionnaire, she actually invoked her right to an
18 attorney minutes later in the interrogation. As soon as police ask about her movements that day, she
19 states that she would rather have an attorney present at that point. When officers try to gain clarity
20 about that statement, she again repeats that she just wants the officers to tell her what evidence they
21 have against her. Instead, officers told her that they just wanted her side of the story; otherwise, they
22 would take what they had to the prosecutor so he could make a final determination about what to do
23 with her. Almost ten minutes pass during which Julia, mostly silently, struggles to decide whether she
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1 should tell her side of the story. Believing, based on officer statements, that it is her only chance to tell
2 her side and get information back from the officers, she finally relents and answers their questions.

3 These circumstances make clear that Julia was not in the right state of mind to make
4 statements, was under the false impression that she would only be told the evidence against her if she
5 waived her right to an attorney, and was persuaded by police statements that her cooperation would
6 give her the best chance of being released after several hours of detention. Given her status as a
7 juvenile with little understanding of the criminal system, all of these factors weigh heavily against her
8 waiver being made knowingly, intelligently, and voluntarily.

9 **CONCLUSION**

10 **WHEREFORE**, it is respectfully requested that this Court order that the statements obtained
11 during Julia Smith's interrogation be suppressed. Counsel certifies that this Motion is made in good
12 faith and not for the purpose of delay.

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14 RESPECTFULLY SUBMITTED this 6th day of March, 2017.

15 SUZUKI LAW OFFICES, L.L.C.

16
17 /s/ Matthew Bartz

18 Matthew Bartz, Esq.

19 Attorney on Behalf of Defendant
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8 ORIGINAL of the foregoing e-filed
9 this 6th day of March, 2017
10 with:

11 <https://efiling.clerkofcourt.maricopa.gov>

12 Copies of the foregoing mailed/faxed/delivered
13 this 6th day of March, 2017
14 to:

15 Maricopa County Superior Court
16 South Court Tower, SCT 7D
17 175 W. Madison Street
18 Phoenix, Arizona 85003

Cochise County

19 Maricopa County Attorney Office
20 301 W. Jefferson
21 Phoenix, Arizona 85003
22 Fax: 602-506-6149

23 By: /s/ Kris Amundsen
24 Kristopher L. Amundsen
25